IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

OP.No. 34645 of 2002(Y)

PETITIONER:

K.KRISHNAN, S/O. KORA,
AGED 58 YEARS, ASSISTANT TEACHER (RETD.),
A.U.P. SCHOOL, PANTHEERANKAVU (RESIDING AT
PALLIAL MANAKKADAVATH HOUSE, P.O. PANTHEERANKAVU,
KOZHIKODE.

BY ADV. SRI.V.A.MUHAMMED,
SRI.K.E.HAMZA.

RESPONDENTS:
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1. **THE STATE OF KERALA,**
   REPRESENTED BY THE CHIEF SECRETARY,
   SECRETARIAT, TRIVANDRUM.

2. **THE DIRECTOR OF PUBLIC INSTRUCTION,**
   JAGATHY, TRIVANDRUM-14.

3. **THE DEPUTY DIRECTOR OF EDUCATION,**
   KOZHIKODE.

4. **THE ASSISTANT EDUCATIONAL OFFICER,**
   KOZHIKODE RURAL.

5. **THE HEADMASTER,**
   A.U.P. SCHOOL, PANTHEERANKAVU.

BY GOVERNMENT PLEADER SMT. T.B. RAMANI.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 58689/2002 IN O.P. NO. 34645/2002

DISMISSED

06/08/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE APPOINTMENT ORDER DTD. 24/02/1996.

EXT.P.2: COPY OF THE STATEMENT OF FIXATION OF PAY DTD. 18/01/1997.

EXT.P.3: COPY OF THE RELEVANT PAGE OF THE AUDIT OBJECTION DTD. NIL.

EXT.P.4: COPY OF THE ORDER NO. F. 2499/99 OF THE R.4. DTD. 14/01/2000.

EXT.P.5: COPY OF THE COMMUNICATION OF THE ACCOUNTANT GENERAL, TRIVANDRUM DTD. 21/02/2002.

EXT.P.6: COPY OF THE G.O. (RT). NO.3052/2002/GE OF THE GOVERNMENT DTD. 09/09/2002.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

P.A. TO JUDGE

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.34645 OF 2002

Dated this the 6th day of August, 2007

JUDGMENT

While working as Assistant Teacher in an aided school, the petitioner was put in charge of the Headmaster on 16.8.1994 on account of the then incumbent holding that post being placed under suspension. The disciplinary proceedings against that Headmaster ended adverse to him and the petitioner was regularly appointed as Headmaster from 28.6.1996. The appointment order issued by the Manager was approved by the competent statutory authority. It appears that thereafter, the Headmaster who was facing disciplinary proceedings carried the matter, which ultimately led to the disciplinary proceedings being reversed and that Headmaster being brought into his original position. In the interregnum, i.e., for the period from 16.8.1994 to 28.1.1998, the fact remains that the petitioner was officially put in charge and later promoted as Headmaster and therefore, any consequence that could, if at all, visit him was to be reverted to pave way for the Headmaster, disciplinary proceedings against whom ended letting him rejoin duty as

Headmaster. Obviously, the petitioner had carried out his duties and responsibilities attached to the post of Headmaster and has therefore, to be treated as having earned in that post. Later on, on objection by the Accountant General, the Director of Public Instructions had decided that the petitioner should refund the amounts drawn by way of excess drawings in the post of Headmaster. It is, therefore, that the petitioner has sought for a direction that the special pay due to him for the period as Headmaster be permitted to be released. It is the admitted fact that the petitioner had discharged the duties and responsibilities attached to the office of the Headmaster. He was promoted to that post by the Manager of the aided school. That statutory proceedings was approved by the statutory official authorities, viz., the Assistant Educational Officer. It had not been reversed by any superior statutory authority under the KER at any point of time until the Accountant General had raised the objection. It would be too unjust to let a person work for nearly four years in a post and later on to tell him that the earnings for two years in that post were not due to him. None has a case that he has drawn anything in excess of what an Headmaster could have

drawn in that post. If that be so, while this may be a case where the Government would be making double payment owing to the interference it made with the disciplinary proceedings against the Headmaster who held the office earlier, there is no rhyme or reason to compel the petitioner to refund the alleged overdrawals. To treat his earnings in the post of Headmaster as excessive amounts would be too arbitrary. The ends of justice require that the petitioner is left to enjoy the fruits of his labour.

In the result, this writ petition is partly allowed, directing that the petitioner will be entitled to draw emoluments as that of the Headmaster from 16.8.1994 to 27.1.1998 and the relief of interest on alleged delayed payment of DCRG is refused. Since the petitioner has conceded before the DPI to surrender the Earned Leave, I am not inclined to issue any direction in favour of the petitioner in that regard.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.34645 OF 2002

JUDGMENT

6th AUGUST, 2007.

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